

# European Account Preservation Order

2011/0204(COD) - 13/10/2011 - Document attached to the procedure

Opinion of the European Data Protection Supervisor on a proposal for a regulation of the European Parliament and of the Council creating a European account preservation order to facilitate cross-border debt recovery in civil and commercial matters

Whilst the EDPS is pleased to see the application of and the references to the principle of necessity, he believes that the proposed regulation would still require some further improvements and clarifications.

Removal of claimants address: according to Article 25 of the proposal, the defendant shall be served with the EAPO and all documents submitted to the court or competent authority with a view to obtaining the order, which seems to include the information provided in Annexes I, II and III. There is no indication of the possibility for the claimant to request the removal of his address details from the different documents before they are sent to the defendant. As there might be circumstances in which revealing the address details of the claimant to the defendant might entail the risk of the claimant being subject to out of court pressure from the defendant, the EDPS suggests that the claimant should be able to request the removal of these details from the information provided to the defendant.

Telephone number and e-mail address of defendant: if this information is included as data fields in Annex I which can be used if other contact information of the defendant is missing, this should be clarified. Otherwise, there seems to be no reasons to keep these data fields.

Defendants bank accounts: Article 17(2) requires the claimant to provide all information available to the claimant about the defendant and the defendant's bank account(s). This is a broad formulation, which could entail the transfer of all kinds of information on the defendant. The provision does not make clear that such information should be restricted to information which is necessary to identify the defendant and determine his or her bank account(s). The EDPS recommends restricting the information provided by the claimant to what is necessary to identify the defendant and to determine his or her bank account(s).

Appropriate and reasonable means of obtaining information: the reference in Article 17(4) to all the appropriate and reasonable means could imply methods of investigation which severely intrude into the private life of the defendant.

In order to prevent any misunderstanding on the scope of the means available to the competent authority, the legislator could consider replacing the reference to all appropriate and reasonable means by one of the two methods referred to in paragraph 5.

Existing public registers: the two methods are as follows: obliging all banks in the territory of the Member State of enforcement to disclose whether the defendant holds an account with them, and access by the competent authority where the information is held by public authorities or administrations in registers or otherwise. The EDPS has questions with regard to the second one. In Annex I to the proposal, reference is made to existing public registers

For the sake of clarity, it should be explained what is actually meant by Article 17(5)(b) of the proposal. Furthermore, the methods for collecting the information should comply with the principles of necessity and proportionality.

Lastly, the EDPS feels that Article 27(3) should stipulate that the bank may transmit its declaration by electronic means of communication, if these means are secure in line with Articles 16 and 17 of Directive 95/46/EC.